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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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NICOLE BROWN, *et al.*, Plaintiff

EASTERN DISTRICT OF CALIFORNIA

Case No. 1:20-cv-00466-BAM (PC)

ORDER STRIKING COMPLAINT FOR
IMPROPER SIGNATURE
(ECF No. 1)

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CALIFORNIA DEPARTMENT OF
CORRECTIONS, *et al.*,
Defendants

Defendants.

**ORDER DENYING MOTION TO PROCEED
IN FORMA PAUPERIS, WITHOUT
PREJUDICE, FOR IMPROPER SIGNATURE
(ECF No. 2)**

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THIRTY (30) DAY DEADLINE

18 Plaintiff Nicole Brown, a non-prisoner, and Plaintiff Freddie L. Smith, a state prisoner, are
19 proceeding *pro se* in this civil rights action under 42 U.S.C. § 1983. Plaintiffs initiated this action
20 on September 9, 2019, together with a motion to proceed *in forma pauperis*. (ECF Nos. 1, 2.)
21 The complaint and the motion to proceed *in forma pauperis* both have two signatures, and appear
22 to be submitted jointly. (See ECF No. 1, p. 6; ECF No. 2, p. 2.)

Upon review of the submitted documents, the Court notes that there are several deficiencies that must be corrected for this case to proceed to screening.

25 I. Signatures and Unrepresented Parties

26 First, it appears that Plaintiff Smith may not have signed the complaint and the *in forma*
27 *pauperis* motion. Neither of the signatures or the handwriting on those two documents match the
28 signature used on one of the exhibits attached to the complaint. (Compare ECF No. 1, p. 6 and

1 ECF No. 2, p. 2 with ECF No. 1, pp. 8–9.)

2 Although they may be proceeding jointly in an action, because both plaintiffs are
3 proceeding *pro se* (without an attorney), both the Federal Rules of Civil Procedure and this
4 Court's Local Rules require that all filed pleadings, motions, and papers be signed by the party
5 personally if the party is unrepresented. Fed. R. Civ. P. 11(a); Local Rule 131(b). Upon
6 examination of the signatures included, it appears that Plaintiff Brown has signed on behalf of
7 herself and Plaintiff Smith. Accordingly, Plaintiff Smith has not properly joined the complaint or
8 the motion to proceed *in forma pauperis*.

9 If Plaintiff Brown is attempting to represent Plaintiff Smith in this action, she is informed
10 that as a non-attorney, she cannot represent Plaintiff Smith. Each plaintiff can proceed in this
11 action only by raising claims on their own behalf. As such, Plaintiff Brown cannot sign
12 pleadings, motions, or other papers for Plaintiff Smith.

13 **II. *In Forma Pauperis* Application**

14 Similarly, each plaintiff must submit their own application to proceed *in forma pauperis*,
15 signed by the individual applying for *in forma pauperis* status. The current application, though
16 containing the names of both plaintiffs, appears to relate only to the financial status of Plaintiff
17 Smith, who is incarcerated at Corcoran State Prison. (ECF No. 2.) However, if Plaintiff Brown
18 wishes to proceed *in forma pauperis* in this action, she must also submit an application to proceed
19 *in forma pauperis*. Furthermore, as it appears Plaintiff Brown is a non-prisoner, she will need to
20 complete the non-prisoner application form. If Plaintiff Brown does not wish to proceed *in forma*
21 *pauperis* in this action, she will be required to pay the full \$402.00 filing fee for this action, even
22 if Plaintiff Smith qualifies to proceed *in forma pauperis*.

23 **III. Claims Raised by Plaintiff Brown**

24 Finally, it does not appear that Plaintiff Brown is properly joined as a party to this action.
25 The only claims raised in the complaint relate to Plaintiff Smith. Plaintiff Brown is only
26 mentioned in passing, and it does not appear that any damages or other remedies are requested for
27 any injury suffered by Plaintiff Brown. Plaintiff Brown may not join this action as a party if she
28 is not raising any claims related to the claims of Plaintiff Smith. In the new complaint, Plaintiffs

1 may wish to consider whether Plaintiff Brown should be joined as a party to this action, or
2 whether this action should proceed with Plaintiff Smith as the only plaintiff.

3 **IV. Conclusion and Order**

4 Based on the above, the Court finds it appropriate to allow Plaintiffs an opportunity to
5 correct the identified deficiencies.

6 Accordingly, IT IS HEREBY ORDERED as follows:

- 7 1. Plaintiffs' complaint, (ECF No. 1) is STRICKEN from the record for improper signatures;
- 8 2. Plaintiff's motion to proceed *in forma pauperis*, (ECF No. 2), is DENIED, without
9 prejudice, for improper signatures;
- 10 3. The Clerk of the Court is directed to send to Plaintiff Brown:
 - 11 a. A civil rights complaint form; and
 - 12 b. An application to proceed *in forma pauperis* for a non-prisoner;
- 13 4. The Clerk of the Court is directed to send to Plaintiff Smith:
 - 14 a. A civil rights complaint form; and
 - 15 b. An application to proceed *in forma pauperis* for a prisoner;
- 16 5. Within **thirty (30) days** from the date of service of this order, Plaintiffs shall submit:
 - 17 a. A complaint properly signed by each plaintiff proceeding in this action or a notice
18 of voluntary dismissal; and
 - 19 b. An application to proceed *in forma pauperis* for each plaintiff proceeding in this
20 action or the \$402.00 filing fee; and
- 21 6. **Plaintiffs' failure to respond to this order will result in the dismissal of this action for**
failure to obey a court order, failure to pay the filing fee, and failure to prosecute.

23 IT IS SO ORDERED.

25 Dated: January 25, 2021

26 /s/ Barbara A. McAuliffe
27 UNITED STATES MAGISTRATE JUDGE